UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1536
28 October 1996

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1536th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 23 October 1996, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1536/Add.1.

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GE.96-18691 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATE PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Special report of the United Kingdom in respect of Hong Kong (continued) (CCPR/C/117)

1. At the invitation of the Chairman, Mr. Steel and Mr. Fung (United Kingdom) took places at the Committee table.

2. Mrs. CHANET reiterated the Committee's position that the population of Hong Kong must continue to enjoy the benefits of the Covenant's protection after the transfer of sovereignty. Moreover, the statement to that effect in the Sino-British Joint Declaration had not been challenged by the International Court of Justice.

3. Mr. Steel and Mr. Fung of the United Kingdom delegation seemed to have adopted slightly different approaches to the situation in Hong Kong. Mr. Fung had referred to China's reporting obligation under article 40 of the Covenant and had spoken of major progress. Mr. Steel had been more cautious regarding the response of the Chinese side. She thus asked for further particulars of China's position with respect to its obligation under article 40.

4. Mr. Steel had assured the Committee that the United Kingdom would continue to "monitor" the implementation of the Covenant after 30 June 1997. She wondered how that would be done, particularly after the Joint Liaison Group ceased to function on 1 January 2000.

5. It was surprising that the Joint Declaration made no provision for the settlement of differences if, for example, one of the parties failed to honour its commitments or there were differences of interpretation. Preparedness for such eventualities was particularly important in view of the discrepancies between the Joint Declaration and the Basic Law of the Hong Kong Special Administrative Region. Article 18 of the Basic Law, for example, contained a provision regarding states of emergency.

6. She feared that the fields of activity of non-governmental organizations (NGOs), listed in article 149, might be used to restrict the activities of political NGOs, which were currently active in Hong Kong by virtue of the Bill of Rights Ordinance (BORO). She wondered whether article 160, which stated that the laws previously in force in Hong Kong would be maintained unless they were in contravention of the Basic Law, could be invoked to impose a ban on political NGOs.

7. Mr. BÁN expressed his disappointment at the persistently negative attitude of the Chinese authorities to the BORO and urged the United Kingdom authorities to continue to raise the matter with the Chinese Government at the highest levels and also to press their objections to the idea of a provisional legislature.

8. He had the impression that the Chinese authorities seemed unwilling to fulfil their reporting obligations under article 40 of the Covenant when they had met a United Kingdom delegation after the submission of the special report.

9. He asked whether the United Kingdom Government had availed itself of the opportunity for consultations in the Joint Liaison Group envisaged in paragraph 3 (marginal number 175) of annex II to the Joint Declaration. The Group was designated under that paragraph as the official channel for the submission of formal complaints regarding breaches of the agreement. It was therefore the appropriate forum for discussing the BORO, the provisional legislature and reporting obligations. It was unclear, however, what further steps could be taken if consultations failed to resolve outstanding issues.

10. He would like to know what the feelings of the United Kingdom authorities were regarding the status of the Joint Liaison Group after the transfer of sovereignty and what types of complaints it would then be competent to consider. Lastly, in the event of disputes that were still pending when the Group was dissolved on 1 January 2000, he wondered whether there were any other international forums available to consider them after that date.

11. Mr. BRUNI CELLI said there could be no doubt whatsoever that China had, by signing the Joint Declaration, assumed all the obligations deriving from the Covenant, including the obligation to respect and guarantee human rights in Hong Kong and the obligation to report. Caution was certainly indicated, but the Committee should also remain optimistic since it was unlikely that China - a permanent member of the Security Council - would flout the basic principles of the United Nations and its Charter.

12. Mr. LALLAH said he hoped that the Committee would give careful consideration to the basic questions raised by Mr. Fung, who was undoubtedly expressing the Hong Kong Government's desire to ensure the continued observance of human rights obligations under the Covenant.

13. There was a distinction between obligations under general international human rights law, obligations under the United Nations Charter and obligations under the Covenant. China had shown clearly with regard to Hong Kong, in both the Joint Declaration and the Basic Law, that it was acting under the Covenant and not under either of the first two headings.

14. From a strictly technical point of view, the question arose as to whether China, having assumed responsibility for Hong Kong under the Covenant, was entitled to nominate one of its nationals for election to the Committee. If China eventually signed and ratified the Covenant, would it have some form of dual membership?

15. He did not share Mr. Pocar's doubts concerning the wording of the paragraph on the International Covenants on Human Rights (marginal No. 156) in the Joint Declaration, since it stated the clear intention of the parties to ensure the full application of all the provisions of the Covenant to Hong Kong. With regard to Mrs. Evatt's reservations about the phrase

concerning the Covenant "as applied to Hong Kong" in the same paragraph, he considered that those words meant the Covenant subject to the reservations that the United Kingdom had seen fit to enter.

16. He did not agree with the charge that the United Kingdom, having done little or nothing for 150 years, was rushing to pass laws in Hong Kong. In the decolonization process, the United Kingdom, which had assumed the obligations of a number of human rights treaties in respect not only of itself but also of all its territories, had in fact done better by the colonies than by itself: it had put provisions on fundamental human rights into their constitutions. The United Kingdom could hardly be blamed for giving to Hong Kong what it had given to all the peoples which had become independent since the 1950s and regarding which it had had obligations.

17. He had derived some comfort from Mr. Fung's statements that the BORO was consistent with the Covenant and also a very necessary and valuable instrument for the people of Hong Kong, that the reporting procedure would provide the benchmark for ensuring that human rights prevailed, that there was outside monitoring, and that the existing legislature should continue to its full term.

18. The existing legislature had been rightly criticized for not being consistent with article 25 of the Covenant, but that was no reason to say that it should be abandoned and replaced by a provisional legislature which would be in far more serious violation of article 25. If the Legislative Council was to go, it should be replaced by a body which complied with article 25.

19. The future of Hong Kong depended on a degree of certainty internally and also on the outside world's perception of it; it needed legislative continuity and the maintenance of a culture of human rights. Mr. Fung had outlined practical steps that had been taken to ensure a human rights environment, and China should be proud of them. It was to be hoped that China would eventfully ratify the Covenant, because it would be unfortunate to have situations in territories it controlled being monitored and analysed when it did not itself have the right to nominate members of the Human Rights Committee. He agreed that the United Kingdom still had obligations under the Covenant and, before adopting its concluding observations, the Committee should hold discussions in private about the procedure for the next report.

20. Mr. FRANCIS said he was concerned that the Hong Kong Government was committed to revising the status of the Independent Police Complaints Council (IPCC). If the IPCC could not investigate complaints independently, he wondered whether it was really effective and how the Hong Kong Government proposed to achieve impartial investigation of complaints against the police.

21. Turning to the matter of reporting obligations, he said that if, after the end of United Kingdom rule, China did not itself submit reports to the Committee, as it was entitled to do under the Joint Declaration and Basic Law, it could properly delegate that right to Hong Kong, over which it by then would have sovereign authority, to forward the reports itself. If that was not done, the United Kingdom should proceed under article 41 of the Covenant, communicating initially with the State party and then, in the event of failing to receive satisfaction, referring the matter to the Committee.

22. The resolution passed in March 1996 by the Preparatory Committee for the establishment of the Hong Kong Special Administrative Region to set up a provisional legislature was most unfortunate. It would be a breach of the Law of Treaties Convention (pacta sunt servanda), and of the Joint Declaration, the Basic Law and the Covenant itself, and the consequences could be very unfortunate for China. Since Hong Kong was the financial and commercial centre of the Far East, and indeed one of the largest such centres in the world, the message it would send to foreign investors might trigger a nightmare capital flight with unpredictable consequences.

23. The principle of "one country, two systems" should be applied by China to allow Hong Kong to continue in the path of prosperity, which China could then gradually assimilate.

24. The CHAIRMAN, speaking as a member of the Committee, said that the transition period was already under way and although "one country, two systems" might prevail for a while it was impossible to foresee future events; it was the purpose of the Committee's current considerations to exert some influence upon them. Paragraph 156 of the Joint Declaration did not distinguish between substantive and procedural matters: the Covenant was a single instrument which had to be applied as a whole and could not be divided. It had been in effect in Hong Kong since 1976; the United Kingdom Government must take all necessary steps to ensure that all its provisions were fulfilled and not just the first 27 articles.

25. He hoped that there would not be any changes that would be in breach of the Covenant. China would surely accept its responsibilities and fulfil its commitments in good faith, complying with paragraph 156 of the Joint Declaration and fully implementing the Covenant from 1 July 1997 onwards as far as Hong Kong was concerned.

26. He had his doubts about the section in the report on electoral matters. Giving undue weight to the views of the business community and discriminating unreasonably or disproportionately between different classes of voters was a shameless violation of article 2 of the Covenant. However, replacement of the Legislative Council by an imposed legislature that was not freely chosen by the people of Hong Kong would be even less acceptable in terms of the Covenant.

27. Mr. STEEL (United Kingdom) said that he and Mr. Fung had been puzzled by assertions that there had been differences of tone and approach between them, since they spoke with one voice.

28. His Government would continue to press the Government of China at all levels and in all suitable contexts to accept, by virtue either of the Joint Declaration or of the Committee's doctrine of succession, that it had an obligation to continue to submit reports after the transfer of sovereignty. In that endeavour, it would be fortified by the views expressed by members of the Committee. Those views were accepted by his Government, which attached great weight to them and drew them to the attention of others. His Government would make sure that the Government of China knew the Committee's views on the importance for all concerned, including China, of its compliance with its legal and moral obligation in respect of the Covenant.

29. The Joint Liaison Group - which was an intergovernmental group of officials who spoke for their respective Governments and sought to facilitate matters between them - would not exist beyond 1 January 2000, because it was hoped that by then its work would be completed. Nevertheless, his Government took the view that the Joint Declaration gave it a continuing locus standi with China with regard to its implementation, and that would remain after 1 July 1997. His Government would not wash its hands of the Joint Declaration or lose interest in it.

30. A number of members of the Committee had, however, raised the question of his Government's continuing responsibility after 30 June 1997, as distinct from its continuing interest and locus standi. While he would not speculate as to what his Government could or would do if it felt after 30 June 1997 that a situation was arising which was not in accordance with the Joint Declaration, he saw considerable difficulty in the proposition that a State retained legal responsibility in respect of a territory over which it no longer had sovereignty, when the territory and consequent responsibility had in fact passed to another State. He said that the Committee's views in that regard would be reported back to his Government and studied carefully, but in any event the circumstances were hypothetical, and it was to be hoped that they would remain so.

31. Mrs. Evatt had asked about the meaning of the phrase "as applied to Hong Kong" used in the Joint Declaration and the Basic Law. It was intended to indicate that the Covenant would remain in force for Hong Kong with the reservations entered by the United Kingdom which were currently applicable to Hong Kong. She had also asked whether the Joint Declaration could be construed as imposing an obligation on the People's Republic of China to report, even though that country was not a party to the Covenant: that was precisely the position of his Government.

32. Mr. FUNG (United Kingdom), replying to a request for information on the modalities that had been agreed upon by the two States for reporting under the Convention on the Elimination of Discrimination against Women, said that the Convention had been extended to Hong Kong on 14 October 1996. In September 1996, a separate agreement had been reached between the United Kingdom and the People's Republic of China on the Convention's continued application to Hong Kong after 30 June 1997. That agreement had been facilitated by the fact that the People's Republic of China was itself a party to the Convention. The existing practice was that the Hong Kong Government supplied a draft report that was incorporated into the United Kingdom report for submission to the Committee on the Elimination of Discrimination against Women. It had been agreed that a similar practice would be applied after 1 July 1997: the Government of the Hong Kong Special Administrative Region would prepare draft contributions to the People's Republic of China's report, which would then be submitted to the Committee on the Elimination of Discrimination against Women.

33. Turning to the issues raised about the domestic situation in Hong Kong, he referred to the question about the status of the emergency regulations in relation to article 4 of the Covenant. The Emergency Regulations Ordinance empowered the Governor, in Council, to make new regulations in the event of an emergency. Any such regulations would be subject to article 7, subarticle 5,

of the Letters Patent prior to 30 June 1997 and to article 39 of the Basic Law thereafter. Thus, any regulations introduced under the Emergency Regulations Ordinance must be consistent with the Covenant and with the BORO. They would also be subject to the negative resolution procedures in the Legislative Council. Article 18 of the future Basic Law provided for the central Government to step in only if the situation endangered national unity or security and was beyond the control of the Government of the Hong Kong Special Administrative Region.

34. The Hong Kong Government was confident that sufficient capacity to deal with internal security problems had been provided for and saw no reason to enact new regulations to deal with emergency situations. Human rights in time of emergency would be guaranteed by the existing legal machinery and the future Basic Law.

35. On the question concerning the machinery for investigating complaints against the police, the system currently in place contained an adequate series of checks and balances to ensure that all complaints were handled thoroughly, impartially and expeditiously. Such complaints were handled by the Complaints Against the Police Office (CAPO), which was staffed by police officers operating under a totally separate chain of command from the remainder of the police force. Its staff investigated complaints in accordance with strict internal guidelines and procedures.

36. The results of CAPO investigations were subject to external scrutiny by the Independent Police Complaints Council (IPCC), which was soon to be made into a statutory body. The IPCC was composed exclusively of members appointed by the Governor - none were civil servants and none held any official position. It was chaired by a leading Queen's Counsel who was in private practice. Any doubts as to the thoroughness and impartiality of the investigation process were taken up by the IPCC with the CAPO. If the dialogue failed to satisfy the IPCC, it could refer the matter to the Governor for his personal attention.

37. IPCC staff members had free access to all relevant investigation material and were empowered to interview independently any witnesses in complaint cases. In April 1996, a new scheme had been introduced whereby the IPCC was enabled to observe CAPO investigations, by both scheduled and surprise visits. That measure had enhanced the transparency of the system.

38. In order to learn from the experience of others, a comparative study had recently been completed of 10 jurisdictions throughout the world. A total of eight major recommendations had subsequently been developed and were currently being implemented. A senior civil servant had been seconded to the IPCC to conduct an in-depth review of the existing mechanism. A total of 44 recommendations had been made and an interdepartmental steering group had been set up to oversee their implementation.

39. As to any suggestion that the Government might withdraw the draft legislation intended to make the IPCC a statutory body or amend it to give the IPCC other investigative powers, he said that it was the Government's firm intention to transform the IPCC into a statutory body, though intentions could

always be modified by counterproposals. It was too early to speculate, however, on the outcome of the parliamentary discussion on the draft legislation.

40. On the concern expressed about the recommendations by the Preliminary Working Committee (PWC) to repeal three sections of the BORO and to restore six Ordinances that had been repealed on the grounds of inconsistency with it, he said that the Hong Kong Government remained firmly of the view that the comprehensive exercise conducted since 1991 to render all items of legislation consistent with the BORO was legally correct and valid, and that the repeal of the six Ordinances was consistent with international obligations under the Covenant. It therefore shared the concern expressed by members of the Committee and, through diplomatic channels, had conveyed that concern to the Government of the People's Republic of China. A dialogue was currently in progress and there was reason to believe that that concern would be taken into account and that a final decision would be left to the incoming Government of the Special Administrative Region.

41. Reference had been made to the absence of political NGOs from the list in article 149 of the Basic Law. He could state with confidence that that did not mean that such organizations would cease to exist after 1997, because article 27 of the Basic Law provided for freedom of speech, of the press, of association and of assembly, while article 39 incorporated the Covenant's provisions on the right to free expression.

42. As for the relevance of the views expressed by the Committee, he said that the Hong Kong Government took them very seriously. The periodic reports demonstrated the extent to which policies had been introduced, amended or updated to give effect to the views of the Committee, and that practice would continue to be followed. The influence of the Committee's views went beyond the confines of the executive branch to reach the judiciary: the courts, including the appellate courts, regularly cited Committee decisions on individual cases under the Optional Protocol.

43. The CHAIRMAN said that, as the Committee had already made a collective summary of its conclusions, it remained for him to thank the Governments of the United Kingdom and of Hong Kong for submitting a report in line with the Committee's request at its fifty-fifth session. He likewise thanked the representatives of NGOs and of the Hong Kong Legislative Council for the information they had provided to the members of the Committee.

44. The Committee wished to reiterate its view that there was an obligation to continue applying the Covenant in its entirety after 1 July 1997 and that the United Kingdom had an obligation to report on events up to that date.

The public part of the meeting rose at 4.55 p.m.